

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Group Art Unit: 3634

Examiner: CHIN-SHUE, A.

In re application of: JONES, Keith D.)

Serial No.: 09/954,838)

Confirmation No.: 8157

Filed: September 12, 2001)

For: "ADJUSTABLE SAFETY LINE")

Mail Stop **Appeal Brief – Patents**
Commissioner for Patents
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REPLY BRIEF UNDER 37 C.F.R. § 41.41

This is a Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer of November 16, 2007, and supplements Appellant's Appeal Brief filed on September 5, 2007. This Reply Brief is filed within two months of the date of the filing of the Examiner's Answer. Thus, no fee or extension of time is believed to be due. However, if any extension is required, please consider this a request therefor. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account 50-1513.

CERTIFICATE OF EFS-WEB TRANSMISSION

I hereby certify that this correspondence is being transmitted to the U.S. Patent and Trademark Office via EFS-Web on the date indicated below.

/Michelle E. Kandcer/

January 16, 2008

Michelle E. Kandcer

Date

In response to the Examiner's arguments presented in his Answer of November 16, 2007, Appellant respectfully points out that this is the first time that the Examiner has articulated the basis for the rejections and has applied the references on somewhat of an element-by-element basis.

With regard to the teachings of Miller, Appellant maintains that when the knot of Miller is used for its intended purpose (i.e., climbing a tree and lowering a load), the Miller rope and knot are constantly load-bearing, such that the rope and the particular knot constantly support the weight of the user. The fact that the Prusik knot is not under load when being repositioned is irrelevant.

Regarding claim 13, *there is no discussion regarding diameter of the line comprising the Prusik knot which would lead one of skill in the art to this limitation recited in Claim 13* (that the sliding rope coupler is made from a rope that has a smaller diameter than that of the standing rope line). Presumably, the diameters of the line 50 and the line 90 of *Ascherin et al.* are the same, namely a one-half inch static, kernmantle rope (see column 3, lines 1-15). In an effort to show the Appellant's claimed feature, the Examiner relies on drawings and states that "the rope coupler 90 is of a lesser diameter than the standing line 50." Appellant respectfully disagrees. Specifically, Figures 1a and 1b appear to show ropes of the same diameter. Nevertheless, it is improper for the Examiner to rely on the drawings to show measurements, when the reference does not disclose that the drawings are to scale. MPEP §2125 ("When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222

F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) ("The disclosure gave no indication that the drawings were drawn to scale. '[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.'").

CONCLUSION

In view of the above and the previously filed Appeal Brief, the pending grounds of rejection cannot be maintained and all pending claims must be allowed. Any communication that may expedite allowance should be directed to Appellant's undersigned attorney at (770) 984-2300.

Respectfully submitted,
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